

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Criminal Action No. 1:07-cr-00090-WYD

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. B&H MAINTENANCE & CONSTRUCTION, INC., a New Mexico corporation;
2. JON PAUL SMITH a/k/a J.P. SMITH; and
3. LANDON R. MARTIN,

Defendants.

---

**UNITED STATES' NOTICE OF INTENT TO USE EVIDENCE  
OF OTHER CRIMES, WRONGS OR ACTS PURSUANT TO  
FEDERAL RULE OF EVIDENCE 404(b)**

---

The United States hereby provides notice to the Defendants of its intent to introduce evidence of the following crimes, wrongs or acts during its case-in-chief pursuant to Rule 404(b) of the Federal Rules of Evidence.

1. As 404(b) evidence with respect to Count One of the Indictment, Kenneth Rains, a coconspirator and then regional manager of Flint Energy Services' Farmington, New Mexico office, is expected to testify that Defendant J.P. Smith called him in 2005 to tell him that B&H Maintenance & Construction, Inc. ("B&H") was not interested in doing the Slug Catcher job, a project which had been put out for bid by Enterprise Products. Smith told Rains the bid price

that B&H was going to submit for the project.

2. As 404(b) evidence with respect to Count One of the Indictment, Sean Renfro, Division Manager of Sunland Construction, Inc.'s office in Aztec, New Mexico, is expected to testify that Defendant J.P. Smith asked him to email Smith a copy of the bid that Sunland was going to submit to El Paso Natural Gas on the Camino Verde Estate Project. Renfro emailed a copy of the bid to Smith at B&H on October 3, 2005, the day before the bid was due to be submitted to El Paso Natural Gas. Smith received the email and forwarded it to Defendant Landon Martin.

3. As 404(b) evidence with respect to Count One of the Indictment, Rocky de Herrera is expected to testify that on September 13, 1999, when de Herrera was working for Saulcon he received a call from Defendant J.P. Smith, who asked to meet with him. De Herrera is expected to testify that Smith talked about a pipeline project and a saltwater disposal system project that were up for bid. Smith told de Herrera to name his price on the saltwater disposal system and said that Smith would take the pipeline project.

4. The false statements that Defendant Smith made to the FBI Special Agent who interviewed him on January 11, 2006, which are the subject of paragraph 16 of the Indictment, are intrinsic to the conduct charged in Count Two of the Indictment. They would also be admissible, however, pursuant to Federal Rules of Evidence 404(b) to show Defendant Smith's motive and intent for attempting to convince Rains to lie (404(b) evidence as to Count Two of the Indictment), and to show Defendant Smith's knowledge of his own guilt and absence of mistake (404(b) evidence as to Count One of the Indictment). Furthermore, they are also

admissible as 404(b) evidence against Defendant Martin because they show his knowledge and intent to participate in the bid rigging scheme. Defendant Martin listened to and remained silent in the face of Smith's blatant falsehood. A reasonable jury could infer that Martin would not have remained silent unless he were aware of and involved in the scheme. Therefore, the statements are admissible against Martin. (*See* U.S. Mot. for PreTrial Rul. on Admiss. of Test. about Def. J.P. Smith's False States. to FBI, (Docket # 80)) FBI Special Agent Joel Irvin is expected to testify regarding his interview of Defendant Smith on January 11, 2006. Also, Kenneth Rains is expected to testify to what Defendant Smith told him that he, Smith, had told Special Agent Irvin.

Respectfully Submitted,

---

s/Diane Lotko-Baker

---

DIANE C. LOTKO-BAKER

---

s/Carla M. Stern

---

CARLA M. STERN

---

s/Mark D. Davis

---

MARK D. DAVIS

Attorneys, Antitrust Division

U.S. Department of Justice

Midwest Field Office

209 S. LaSalle Street

Chicago, IL 60604

Tel.: (312) 353-7530

diane.lotko-baker@usdoj.gov

carla.stern@usdoj.gov

mark.davis3@usdoj.gov

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Criminal Action No. 1:07-cr-00090-WYD

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. B&H MAINTENANCE & CONSTRUCTION, INC., a New Mexico corporation;
2. JON PAUL SMITH a/k/a J.P. SMITH; and
3. LANDON R. MARTIN,

Defendants.

---

**CERTIFICATE OF SERVICE**

---

I hereby certify that on October 1, 2007 I electronically filed the foregoing United States' Notice of Intent to Use Evidence of Other Crimes, Wrongs or Acts Pursuant to Federal Rule of Evidence 404(b) with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

gjohnson@hmflaw.com

hhaddon@hmflaw.com

pmackey@hmflaw.com

patrick-j-burke@msn.com

markjohnson297@hotmail.com

I hereby certify that I have mailed or served the document or paper to the following non CM/ECF participants in the manner indicated by the non-participant's name:

None.

Respectfully Submitted,

---

s/Diane Lotko-Baker

DIANE C. LOTKO-BAKER

---

s/Carla M. Stern

CARLA M. STERN

---

s/Mark D. Davis

Attorneys, Antitrust Division

U.S. Department of Justice

Midwest Field Office

209 S. LaSalle Street

Chicago, IL 60604

Tel.: (312) 353-7530

diane.lotko-baker@usdoj.gov

carla.stern@usdoj.gov

mark.davis3@usdoj.gov